

HON'BLE SHRI G.S. SINGHVI, THE CHIEF JUSTICE

AND

HON'BLE SHRI JUSTICE P. LAKSHMANA REDDY

WRIT APPEAL No. 378 OF 2006

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Between:

Mrs. D. Radhika and three others

.....Writ Appellants/Writ Petitioners

And

Government of Andhra Pradesh,

rep. by Special Chief Secretary to Govt.,

Revenue (ASNI) Department,

Hyderabad and three others

.....Respondents/Respondents

:: JUDGMENT ::

Counsel for the Appellants : Sri E.V. Bhagiratha Rao

Counsel for the Respondents : Government Pleader for

Assignments

Dated: 10-04-2006

Per G.S. SINGHVI, CJ

The Andhra Pradesh Assigned Lands (Prohibition of Transfers) Act, 1977 (for short 'the Act') was enacted by the State Legislature to prohibit transfers of certain lands assigned to landless poor persons. Sub-section (1) of Section 2 defines the term "assigned land" as lands assigned by the Government to the landless poor persons subject to the condition of non-alienation and includes lands allotted or transferred to landless poor persons under the relevant law for the time being in force relating to ceilings. Section 3 of the Act imposes total ban on the transfer of land assigned by the Government to landless persons. Sub-section (1) of Section 3 lays down where before or after the commencement of the Act any land has been assigned by the Government to a landless poor person for the purposes of cultivation or as a house-site, then notwithstanding anything to the contrary in any law for the time being in force or in the deed to transfer or other document relating to such land, the same shall not be transferred and shall be deemed never to have been transferred and no right or title shall vest in such assigned land in the transferee. Sub-section (2) prohibits transfer of assigned land by the landless poor person and declares that no person shall acquire any assigned land, either by purchase, gift, lease, mortgage, exchange or otherwise. Sub-section (3) of Section 3 declares that any transfer or acquisition made in contravention of sub-sections (1) and (2) shall be deemed to be null and void. Sub-section (4) lays down that provisions of Section 3 shall apply to any person referred to in sub-section (2) in execution of a decree or order of a Civil

Court or of any award or order of any other authority. However, sub-section (5) of Section 3 saves the purchase of the assigned land by a landless person if such purchase is made in good faith and for valuable consideration. Section 4 provides for consequences of breach of the provisions of Section 3. Sub-section (1) thereof lays down that if the District Collector or any other officer not below the rank of Mandal Revenue Officer, who is authorized by the Collector in that behalf, is satisfied that the provisions of sub-section (1) of Section 3 have been contravened, then, he can evict the transferee and take possession of the assigned land and also restore the same to the original assignee or his legal heir. Where it is not reasonably practicable to restore the land to the assignee or his legal heir, then the land can be resumed in favour of the government for being assigned to some other person. Sections 4-A and 4-B provide for remedies of appeal and revision to the person aggrieved of an order made under Section 4(1). Section 4-B also confers of power of suo motu review on the District Collector and the State Government.

The aforementioned provisions have become subject-matter of consideration in various cases and it has been consistently held that the prohibition contained against the transfer of assigned land is absolute and the Collector is not only entitled but is duty bound to take action under Section 4. (See **T. Onnuramma v. Tahsildar, Kadri, D. Reddy vs. Sub-Collector, Bodhan, Majjari Pullanna vs. Sub-Collector, Nandhyal M. Bhoopal Reddy and others vs. The Collector, Rangareddy District and others, B. Karunakar and others v. The Mandal Revenue Officer, Anantapur**)

Notwithstanding the statutory embargo contained in Section 3 of the Act, a number of affluent members of the society, on the strength of money and other powers, have succeeded in manipulating the executive apparatus of the State at the gross root level for purchase of the assigned lands. People belonging to this category clandestinely enter into transaction with landless poor, who are assigned lands by the Government with a view to improve their living conditions and also succeed in getting the sale transactions registered. In most of these cases, violations of the prohibition contained in the Act either do not come to the notice of the authorities or they become mute spectators to the wanton violation of the provisions of the Act. In rare cases, such transactions are detected and action is taken by the concerned authorities for ensuring that violation of the prohibition is at naught. When such action is taken by the competent authority, the purchasers/transferees seek

intervention of this Court by filing petitions under Article 226 of the Constitution of India. In most of the cases, the petitioners raise the plea of delay in the initiation of action for cancellation of transfer. In some cases, the beneficiaries of illegal transactions also rake up the plea that they were not aware of the fact that the land purchased by them was assigned land because such land had not been shown in the list required to be prepared for the purpose of Section 5 of the Act.

The appellants belong to the aforementioned creed of people. All of them purchased assigned land and are now seeking nullification of the action taken by Mandal Revenue Officer, S. Kota for restoration of land to the landless poor. Appellant No.1 purchased land measuring Ac.3.17 cents comprised in Survey Nos.1156/2 and 112 situated at Moola Boddavaram Village, S. Kota Mandal, vide registered sale deed dated 18.9.1989. Appellant No.2 purchased Ac.3.61 cents of land comprised in Survey No.120 of the same village, vide registered sale deed dated 22.7.1986. Appellant No.3 purchased Ac.2.37 cents of land comprised in Survey No.114 vide registered sale deed dated 22.11.1985 and appellant No.4 purchased Ac.1.80 cents of land comprised in Survey No.115/1 vide registered sale deed dated 18.9.1989. On coming to know of these transactions, Mandal Revenue Officer, S. Kota initiated action for cancellation of transfers. In their replies to the show cause notices, the appellants admitted that they purchased the land from the assignees. They, however, requested that their purchases may be regularized in terms of sub-section (5) of Section 3 of the Act. After considering their prayer, the Mandal Revenue Officer passed order dated 3.12.1997 whereby he directed that the land be restored to the original assignee or his legal heirs. The relevant extract of that order is reproduced below:

“Enquiries revealed that the above individuals are kith and kin of Sri I. Ramaraju to whom the Form-I notices were issued. He has asserted that the aforesaid lands belong to that above individual but he is looking after the sale of the produce on these lands. From the assertion made by that individual and the admission of the above individuals that they purchased the aforesaid lands do establish the fact that the aforesaid lands which are assigned lands have been acquired by them by purchase through registered sale deeds and so they are the unauthorized occupiers of the aforesaid lands. Therefore, their physical possession of the above assigned lands and enjoyment thereof prove beyond any doubt that they deliberately contravened the provisions of Sub-section (1) of Section 3 of A.P.A>L. (POT) Act,

1977. Therefore, it is hereby ordered that the land described hereunder shall be restored to the original assignee or his legal heirs with immediate effect”.

The appeals preferred by the appellants were dismissed by Revenue Divisional Officer, Vizainagaram, vide his order dated 2.11.2000. He concurred with the Mandal Revenue Officer that purchases made by the appellants were violative of the prohibition contained in Section 3 of the Act. The appellants challenged the order of the Revenue Divisional Officer by filing revision petition before Joint Collector, Vizaianagaram. The same was dismissed vide order dated 9.7.2002. The argument raised by the appellants’ advocate that the lands in question are zeroiti lands of the transferor and not assigned land was rejected by the Joint Collector by recording the following observations:

“I have perused the connected material papers and heard the arguments of the Advocate for the petitioner. The Revision Petitioners also have not produced any clear cut evidence as these are the zeroiti lands of the above individuals. As could be seen from the Fair Adangal of Moola Boddavara Village produced by the Mandal Revenue Officer, S. Kota, the lands stand registered in the accuse of the following individuals.

S.No. Survey Extent Name of the Pattadar

Number Ac. Cts.

1 112 1.24 Vuram Gangulu

2 114 2.37 B. Sanyasi Rao

3 115/1 1.90 K. Ramulamma

4 115/2 1.93 J. Pydithalli

5 120 3.61 V. Dalibabu

All the above new Survey Numbers are formed from the Old Survey Number '9' is classified as Konda Poramboke with an extent of Acs.324.60 cts. The land is classified as Konda Poramboke in Revenue records. Out of this land the above new Sy.Nos are formed and 'D' pattas were issued in favour of the above assignees and their names were entered in the Fair Adangal at the last pages duly giving Caption as 'D' Form Pattas'. The above records clearly establishes that the above mentioned lands are not zeroity lands of the above individuals. Those lands are Government lands and assigned to S.T. Beneficiaries and any transfer/alienation of these lands attract the provisions of APAL (POT) Act, 1977. According to the Section 3(2) and 3(3) of POT Act, 1977, no person shall acquire any assigned land, either by purchase, gift, lease, mortgage, exchange or otherwise and any acquisition or transfer made in contravention of provisions of Sub-section 1 or sub-section 2 shall null and void."

The appellants challenged the order passed by the Joint Collector in Writ Petition No.12653 of 2002. The same was dismissed as withdrawn because an objection was taken by the respondents that the petitioners could avail the remedy of revision. After some time, they filed Writ Petition No.22015 of 2002 with the complaint that the revision filed by them was not being decided. That petition was disposed by the learned Single Judge on 5.11.2002 by directing the Commissioner of Appeals to decide the revision petition within a period of four months, with a further direction till then the status quo be maintained. Thereafter, the Commissioner of Appeals dismissed the revision petition as not maintainable. The appellants then filed revision before the Statement Government with the prayer that the order passed by Mandal Revenue Officer be set aside and the land in question be restored to them. By an order dated 4.2.2006, Special Chief Secretary to Government dismissed the revision petition. He held that the purchases made by the appellants are null and void and the Mandal Revenue officer did not commit any illegality by resuming the lands.

Undeterred by their failure to persuade the authorities constituted under the Act to annul order dated 31.12.1997 passed by the Mandal Revenue Officer, the appellants tried their luck by invoking the jurisdiction of this Court under Article 226 of the Constitution of India, but Writ Petition No.3204 of 2006 filed by them was dismissed by the learned Single Judge vide his order dated 24.2.2006. The relevant extracts of that order are reproduced below.

“A perusal of the impugned order would show that the land in Survey Nos.120, 115/2, 112, 114 and 115/1 was assigned to landless poor persons. The Mandal Revenue Officer during inspection found that the petitioners purchased the assigned lands, and accordingly initiated action against them. The action of the respondents in ordering resumption of the land is therefore, well within the provisions of the Act. Even if there is a delay on the part of the Mandal Revenue Officer in initiating action, the same does not in any manner mitigate in favour of the petitioners. Secondly, the mere fact that the lands were not included in the prohibited list as contemplated under Section 5 of the Act cannot render the alienations in favour of the petitioners valid.

Learned Counsel for the petitioners submits that whenever the counsel for the petitioners appeared before the first respondent, the matter was not called, and therefore, observations made in the impugned order that the petitioners absented themselves on the date of hearing is false and baseless. This Court is afraid this matter cannot be decided in this writ petition. The Government observed in the impugned order that the matter was posted on 3.3.2005 when the petitioners requested for adjournment. Again the matter was posted on 23.4.2005, 21.5.2005 and 30.12.2005, and on all these dates the petitioners were absent. The Government perused the material and passed the orders. In the absence of any denial that the land purchased by the petitioners is assigned land, this Court does not find any infirmity or illegality in the orders passed by the first respondent.”

Sri E.V. Bhagiratha Rao argued that the learned Single Judge committed a serious error by refusing to set aside order dated 31-12-1997 passed by the Mandal Revenue Officer despite the fact that the latter had resumed the land after 11 years of the purchases made by the appellants and that too without giving them reasonable opportunity of hearing. Learned counsel further argued that even though the purchases made by the appellants were hit by the prohibition contained in Section 3(1), the Mandal Revenue Officer could not have resumed the same after a long gap of 11 years. Sri Bhagiratha Rao emphasized that the lands purchased by the appellants had not been included in the list required to be prepared under Section 5 of the Act and, therefore, bona fide nature of the transactions involving purchase of land cannot be doubted. He submitted that the appellants had purchased land in good faith and, therefore, they are entitled to retain the same.

We have considered the arguments of the learned counsel but have not felt persuaded to nullify the order dated 31.12.1997 passed by the Mandal Revenue Officer, which, as mentioned above, was confirmed by Revenue Divisional Officer, Vizianagaram, Joint Collector, Vizianagaram and the State Government. We entirely agree with the learned Single Judge that the transaction involving purchase of assigned land by the appellants was void ab initio and the Mandal Revenue Officer did not commit any illegality by nullifying the same. At the cost of repetition, we consider it proper to mention that in their replies to show cause notices issued by the Mandal Revenue Officer, the appellants had admitted that the lands purchased by them were assigned lands. This was the reason why they had prayed for regularization of purchases. This being the factual position, the order passed by the Mandal Revenue officer for resumption of land and restoration thereof to the assignees cannot be termed as illegal or arbitrary, more so because order dated 31.12.1997 was passed after giving show cause notices and affording an opportunity to the appellants to represent their cause.

The argument of Shri Bhagiratha Rao that the purchases made by the appellants should be treated as bona fide because the land had not been included in the list required to be maintained for the purpose of Section 5 sounds attractive but lacks merit and is liable to be rejected because,

- a. The appellants have not produced the list of assigned lands prepared for the purpose of Section 5 of the Act and without perusing the same, we cannot record a finding that the lands purchased by them had not been included in the list of assigned lands.
- b. Section 5 contains a prohibition against the registration of any document relating to transfer of, or the creation of any interest in any assigned land included in the list of assigned lands which is required to be prepared by the District Collector. This section does not, in any manner, affect the operation of Sections 3 and 4 which not only prohibits the

transfer of assigned lands but also declares transaction involving transfer of assigned land as void. Therefore, the purchaser of assigned land cannot avoid the consequences of violation of the mandate of Section 3 by contending that the land is not shown in the list of assigned lands prepared by the Collector.

There is another reason for our disinclination to entertain the appellants challenge to the order passed by the Mandal Revenue Officer, which was confirmed by the Revenue Divisional Officer and Joint Collector, Vizainagram as also by the State Government. It is settled law that in exercise of the power under Article 226 of the Constitution of India, the High Court will not issue a writ which may result in restoration of an illegal order or perpetuation of an illegality. While exercising the power under Article 226 of the Constitution, the High Court is not bound to struck down every wrong order merely because it will be lawful to do so and a discretionary relief can be refused if it is found that issue of a writ would result in revival of an illegality or defeat the object of a legislation enacted for benefit of the poor/have-nots of the society. For this proposition we can draw support from the judgments of the Supreme Court in **S.D.S. Shipping (P) Ltd., vs. Jay Container Services Co. (P) Ltd., and ONGC Ltd., vs. Sendhabhai Vastram Patel** . If the claim of the appellants is accepted, then the same would result in revival of the transaction which was prohibited by Section 3 of the Act. Therefore, notwithstanding the fact that Mandal Revenue Officer has passed order for resumption of the land after long lapse of time, we do not consider it a fit case for exercise of discretionary jurisdiction of this Court to nullify the order dated 31.12.1997.

For the reasons mentioned above, the appeal is dismissed.

At this stage, learned counsel for the appellants submitted that his clients may be permitted to remove the wood of the trees planted on the land in question. In this context, it is sufficient to observe that no material is available before this Court on the basis of which we can positively adjudicate on the entitlement of the appellant to remove the wood from the land in dispute. However, we give liberty to the appellants to file an appropriate application before the Mandal Revenue Officer which the officer concerned is expected to decide in accordance with law.

G.S.SINGHVI, CJ

P. LAKSHMANA REDDY, J

10-04-2006

ks/msv/vtv/svs